IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI WESTERN DIVISION

LESLIE AKERS, and)	
MARY AKERS, his wife,)	
Plaintiffs,)	
v.)	No. 4:13-cv-00794-DGK
AUTO-OWNERS (MUTUAL) INSURANCE COMPANY,)	
Defendant.)	

DENYING MOTION FOR DISMISSAL WITHOUT PREJUDICE

This lawsuit concerns insurance coverage for a fire loss which occurred at Plaintiffs' home. This lawsuit was originally filed in the Circuit Court of Jackson County, Missouri, and then removed to federal court based on the Court's diversity jurisdiction, 28 U.S.C. §§ 1332, 1441, and 1446.

Now before the Court is Plaintiffs' "Notice of Dismissal" (Doc. 40) brought pursuant to Federal Rule of Civil Procedure 41(a). Plaintiffs seek to dismiss without prejudice, and they mistakenly contend they have "an absolute right to file a voluntary dismissal" (Doc. 68 at 1). Plaintiffs filed their notice shortly before Defendant filed its "Motion for Leave to File Counterclaim for Declaratory Judgment" (Doc. 41).

Defendant filed its answer last September and has been actively litigating this case since then. Defendant opposes dismissal without prejudice. Defendant contends that during discovery it learned Plaintiffs made intentional misrepresentations in connection with their claim, hence its motion for leave to file a counterclaim for a declaratory judgment. Rule 41(a) provides that once a defendant has filed an answer, the plaintiff may dismiss

only if (1) the defendant stipulates to dismissal, or (2) the court orders dismissal on terms that it

considers proper. Given that Plaintiffs have failed to present a proper justification for dismissal

and that dismissal will work some prejudice on Defendant who has spent nine months litigating

this case in this forum, the Court holds that dismissal without prejudice is not appropriate. See

Thatcher v. Havover Ins. Grp., Inc., 659 F.3d 1212, 1213-14 (8th Cir. 2011).

IT IS SO ORDERED.

Date: July 28, 2014 /s/ Greg Kays

GREG KAYS, CHIEF JUDGE

UNITED STATES DISTRICT COURT

2